THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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W.P.NO.24279 OF 1996

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O R D E R (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

In the instant writ petition petitioners seek to quash the order dated 8.10.1991 passed by the learned Chief Judge, City Civil Court, Hyderabad cum Special Tribunal under Andhra Pradesh Land Grabbing (Prohibition) Act.

2. The State through its Mandal Revenue Officer, Golconda, filed an application in O.P.No.187/1990 against one K.Markandayulu, the respondent therein, seeking eviction over the land measuring 287 sq. yards covered by T.S.No.15, Ward No.36, J situate at Mallepally village. When the respondent remained *ex parte* there, the impugned order was passed *ex parte*, after considering the oral evidence of P.W.1 and the documentary evidence in Exs.A-1 and A-2, the notable among them being Ex.A-2, a copy of the town survey register.

3. Pursuant to the impugned order passed in O.P.No.187/1990, the Revenue Divisional Officer got a notice affixed on to the premises requiring the aforesaid Markandayulu to vacate the premises and handover the same to the Deputy Tahsildar. The writ petitioners who are the inmates of the property in question by then, on verification and after having come to know of the earlier proceedings against Markandayulu their vendor, approached this Court in the instant writ petition,

assailing the jurisdiction of the Special Tribunal, as an order having been passed without jurisdiction and contrary to the principles of natural justice.

4. It is their case that the property in question along with other properties in respect of which, the State filed several applications in a batch, originally belong to the said Markandayulu, who way back in the year 1989 entered into a development agreement with the builder, pursuant to which the builder constructed the flats after having obtained the necessary permission from the authorities concerned; one such flat has been in the occupation of the petitioners and the State has no title whatsoever over the property and neither Markandayulyu, nor the petitioners nor the developer, is the land grabber.

5. It is obvious from the record that the order in question has been passed *e x parte*. No notice has been served personally on the aforesaid Markandeyulu, as he was abroad by then. It is only a substituted service that was taken by means of publication in the newspaper. No notice has been affixed on the premises like the one, which has been affixed subsequently after the impugned order has been passed. Having regard to the fact that the respondent in the O.P. was abroad and was not in the country, more particularly in the premises in question, the substituted service cannot be an effective service. As per Rule 9 of A.P. Land Grabbing (Prohibition) Rules, 1988, a notice in Form IV-A is required to be served on the person who is allegedly the land grabber. As per Rule 8, the Special Court shall give notice in Form III-A to the

persons known or believed to be interested in the land. Although the Tribunal or the Special Court, as the case may be, shall follow the procedure prescribed in accordance with the Civil Procedure Code in the trial of the case, the third proviso under sub section 4 of Section 7-A specifically obligates the Tribunal to cause a notice of taking cognizance of the case under the Act served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land. When the notice was not served upon the respondent, the State before seeking for a substituted service by means of a publication in the daily newspaper, must have made enquiries about the persons who are interested in the property in the absence of the respondent and must have sought a notice as enjoined under the third proviso to sub section 4 of Section 7-A caused to be served by the Tribunal upon that person. Instead of following the said procedure, conveniently the State followed the procedure enjoined under Civil Procedure Code for substituted service and sought to serve the notice upon the person who was not in the station, nor residing in the premises in question, nor anymore interested having already parted with the property in dispute. This clearly constitutes, in our considered view, a lapse on the part of the applicant and a jurisdictional error on the part of the Tribunal. That certainly vitiates the impugned order passed in this case.

6. Although a statutory appeal has been provided under the Act as against the orders of the Special Tribunal to the Special Court, having regard to the fact that it is a clear case of committing an illegality of jurisdictional error, which vitiates the

order, the maintainability of the instant writ petition for issuing a writ of certiorari, cannot be doubted.

7. For the above reasons, the writ petition is allowed. The impugned order is hereby set aside and the matter is remitted to the Special Tribunal for fresh disposal in accordance with law. No order as to costs.

T.CH.SURYA RAO,J

G.CHANDRAIAH,J

AVS
DATE:11.07.2006